

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IIInd Appeal No.150 of 2020

Date

Order with signature of Judge

HEARING OF CASE:

1. For hearing of CMA No.3308/2020.
2. For hearing of CMA No.3309/2020.
3. For order on office objection.
4. For hearing of main case.

Dated; 18th May 2026

Ms. Nousheen Khan Tajjamul, Advocate for Appellant.

Syed Qaim Ali Shah, Asst. A.G. Sindh.

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ORDER

This is a IIInd Appeal filed by the appellants against concurrent findings passed by the Courts below against the appellants in respect of a suit seeking declaration, cancellation, possession and mense profit filed by them in respect of the suit property i.e. R-502, Sector 11-C/1, North Karachi Township, wherein it was claimed that in respect of suit property, respondent No.1 was a tenant on the ground floor and respondent No.2 is his wife. It is further contended that the said respondent No.1 created forged document of power of attorney in favour of respondent No.2 coming from the appellant No.2, whereafter, on the basis of power of attorney registered document of sale deed was created in respect of respondent No.1, her husband. The proceedings in the first round was decreed, wherein the respondents had failed to lead evidence, however, the matter was remanded back providing opportunity to respondents, which also failed the second time, despite which the trial Court was pleased to dismiss the suit alongwith Appellant's Court upholding the said order.

2. Learned counsel for the appellant has contended that the learned trial Court had failed to consider that no evidence coming up

from the respondents, suit was liable to be decreed. She further contended that the appellant No.2 had entered into the witness box and got the case proved and as he was not cross-examined, as such, there is no rebuttal to his deposition. She also contended that the learned Appellate Court had wrongly considered the earlier registration of document in favour of the respondents as the sufficient ground to dismiss the appeal without considering the same on any valid ground.

3. No one is in attendance on behalf of the private respondents, against whom the service was already held good. However, learned AAG present contended that the document in question having been registered by the Sub-Registrar, Gulberg Town, required to be cancelled was never made party in the proceedings and instead of it, Sub-Registrar, New Karachi Township has only been joined in the proceedings. It is further contended on the part of AAG that the Appellate Court order on account of earlier registration of the document holds the ground for dismissing the appeal, however, he concedes that such element is only one ground and consideration was required to be seemed.

4. Having heard the learned counsel for appellants, learned AAG and gone through the record with their assistance.

5. Apparently, the learned trial Court in the matter had framed following issues:

1. Whether plaintiff No.2 executed agreement of sale on 17-08-2005 with the defendant No.2 against total sale consideration of Rs.19,00000/- from defendant No. 1 in respect of suit property.?

2. Whether plaintiff No.2 received amount of Rs,6,00000/- from the defendant No.1 in respect of suit property.?

3. Whether defendant No.2 got registered the power of attorney in favor of plaintiff No.1?

4. Whether sale deed executed by defendant No.2 in favor of defendant No.1 in respect of suit property on the basis of alleged power of attorney same may be cancelled?

5. Whether sale deed executed by the plaintiff No.2 in favor of plaintiff No.1 is legal and valid?

6. Whether the suit is not maintainable?

7. Whether no cause of action has been accrued against the defendant?

8. Whether plaintiffs are entitled for any relief claimed?

9. What should the decree be?

6. The learned trial Court was declared Issues No.1&2 in negative, whereas Issue No.3 was considered in affirmative alongwith Issues No.6, 7 and 8 following the same. While going through the trial Court's judgment it is observed as coming up to Issue No.3 that the plaintiffs had not produced the alleged general power of attorney with their affidavit-in-evidence. The said finding strangely was coming without the element of denial of existence of power of attorney, however, in the first instance and despite the fact that such element was never came up in the cross-examination, which was available to the Court itself when the witness was produced. It is not available to a Court of law to make a blind faith on the party when such element has never been brought up in evidence, which is present in the matter. Even otherwise, the said power of attorney is only to acquire the subsequent sale deed, which records the acknowledgment of transfer of right by the parties in the matter. The prime question in the matter being the consideration was the question by the learned trial Court as well as learned Appellate Court, which apparently never beneficial and it was preferred to conclude the same only on one ground of earlier registration. No doubt, earlier registration of a document is one of the considerations to be examined for considering the validity of the document. However, the prime consideration in the matter being the benefit was never considered by the learned trial Court as well as by

the learned Appellate Court, despite the same coming up in the issue. In the said circumstances, it is very strange that both the Courts below without considering the said element of consideration preferred to lean towards technically and not the merits of the matter / controversy. The earlier owners had come up in the witness box, who was never cross-examined and he being the executant of the subject document his deposition having gone un-rebutted nothing more was required to shift the burden of proof, which in the present matter was never disturbed by the respondent and that so after the remand. It is found sufficient to prove in the present circumstances.

7. As to the contentions of learned AAG, the concerned Sub-Registrar being made a party, the said Sub-Registrar in the circumstances is not necessary party but a formal party. In the said circumstances, instant IInd Appeal is found liable to be allowed and it is so ordered. The concurrent findings of the Courts below through impugned judgment and decree stands set aside and the suit of the appellants/plaintiff stands decreed. Accordingly, instant IInd Appeals stands disposed of with costs throughout.

8. At this juncture, Mr. Muhammad Aqil Zaidi, Advocate for the KDA, subsequently appeared and stated that he requires copy of memo of appeal to assist the Court. However, the KDA, being a formal party also on account of being liable to maintain the record in the matter, was not required to be heard in respect to the judgment on merits as to right of the parties as already given irrespective to the same. Let copy of memo of instant appeal is provided to him for his record.

JUDGE